

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3518 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI AMARABHAI CHAUHAN

Versus

SETTLEMENT COMMISSIONER & DIRECTOR OF LAND RECORDS

Appearance:

MR MOHANBHAI DESAI for Petitioner
MR SP HASURKAR for Respondent No. 1
RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/10/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a direction to the respondents to make payment of legitimate salary due and payable to the petitioner for the period from 21.1.82 to 22.11.1982, amounting to Rs.50,000/- with interest at the rate of 12% per annum.

2. The petitioner was appointed as a surveyor on temporary basis in the office of Special District Inspector of Land Records, City Survey, Ahmedabad. The petitioner was serving as Inquiry Officer, Tharad. He was transferred to the office of Survey Mamlatdar -1, Ahmedabad office as survey clerk by an order dated 26.3.80. By an order dated 7th April, 1980 the petitioner who was working as clerk in the office of the City Survey Inquiry Officer, Tharad was transferred to the office of Survey Mamlatdar-1, Ahmedabad as surveyor on the vacant post. The petitioner reported on 14.4.80 in compliance of the office order no. EST-3-26/3/80 and he requested to permit him to join duties. The Survey Mamlatdar-1, Ahmedabad directed some subordinate officer namely A I Ghanchi by order dated 14.4.80 to allow him to join from 15.4.80, but the petitioner was not permitted to join his duties. The petitioner made a representation dated 11.9.80 to Special Superintendent, Land Records, Vadodara. By a letter dated 17th September, 1980 Survey Mamlatdar-1, Ahmedabad directed that as the petitioner had been relieved from the office of Special DILR, City Survey, Ahmedabad on the basis of his appointment order, he was required to be resumed duty, but he was not allowed to join his duties which was not just and reasonable. He should be instructed to complete his incomplete proceedings/work of the office of his time and at his costs. He also made further direction that before relieving the petitioner incomplete proceedings were required to get completed and if the surveyor has any arrears of work, he should not be relieved and if he had been relieved, it would be against rules not to resume employee on duty. If the work of the petitioner was incomplete and incomplete diary was obtained, then remaining work was to be completed by another surveyor and the departmental proceedings against the petitioner could be initiated, but it was not proper not to allow the petitioner to resume his duties.

The petitioner further submitted that he was being illegally harassed as the record was not being provided to him. By an order dated 22.11.80 the petitioner was posted on the vacant post in the office of Survey Mamlatdar-1, Ahmedabad, but the petitioner was not paid for the period from 21.1.80 to 22.11.82.

4. On behalf of the respondents, affidavit-in-reply has been filed wherein it is averred that the petitioner joined his duties on 2.1.78, but the petitioner had not reported for duty nor his whereabouts were known to the office though he was called upon from 22.1.80 to 22.11.1982 and departmental proceedings were initiated

against him. The petitioner was placed at the office of the Special District City Survey, Ahmedabad from 2.1.78 to 8.5.79. The petitioner was required to report the work carried out and measurements recorded of the agricultural land before leaving for reporting at the transferred place at Tharad, the petitioner was required to report the measurements carried out and place the measurements instruments on record, but the petitioner had not performed his duties during the period nor measurements books were furnished by the petitioner for the relevant period. The petitioner was relieved by the Tharad office on 21.1.80 for completion of his work. The petitioner reported on 6.2.80 for completion of work, but immediately after reporting on work, he left the assigned work and did not attend his duties till 23.11.1982 without any leave report or permission or otherwise or any reason assigned by the petitioner. He was not paid the salary on the basis of "no work no pay". It is also submitted that the petitioner did not report on duty from 21.1.80 to 21.11.82 and hence proceedings were initiated. The petitioner proceeded on a hunger strike. Subject to the departmental proceedings, the petitioner was ordered to be resumed on work vide instructions upto 3.12.82. The petitioner also filed Special Civil Application no.11161 of 1984 wherein directions were issued to the administration to decide a representation of the petitioner within a period of three months after affording an opportunity of being heard to the petitioner and the petitioner's representation was decided by an order dated 24.1.1995.

6. The learned Assistant Government Pleader

Mr. Mehta submitted that the petitioner had not worked for the relevant period and he had not reported himself for duty and even he has not reported himself for duty for the aforesaid period, hence he is not entitled for any payment for that period.

7. I have considered the submissions made on

behalf of the parties. From the relevant papers, it appears that the petitioner was working in the office of the City Survey Inquiry, Tharad as clerk, wherefrom he was transferred as a surveyor in the office of Survey Mamlatdar-1, Ahmedabad office by an order dated 26.3.80. Another order dated 7.4.80 also shows that the petitioner was working as a clerk in the office of City Survey Inquiry, Tharad and was transferred as a Surveyor in the office of City Survey Mamlatdar-1's office by an order dated 7.4.80. It appears that he was relieved on the basis of the transfer orders at another place. Meanwhile, another order was passed directing the

petitioner to complete his work and he completed that work, but the petitioner was not allowed to join his duties at the place where he was transferred and he reported by an application dated 14.4.80. Survey Mamlatdar-1, Ahmedabad also directed Mr. A I Hathi by an order dated 14.4.80 to permit the petitioner to join from 15.4.80 to 30.8.82. The petitioner was also issued a certificate dated 30.8.82 by a Special District Inspector of Land Records, City Survey, Ahmedabad that the petitioner had completed all pending work of his office and no work was pending nor he was required to submit any report. Even then the petitioner was not allowed to attend. In the last, order dated 22.11.82 Annexure "G", was passed by Special Superintendent, Land Records, Vadodara to make appointment of the petitioner on the vacant post in the office of Survey Mamlatdar-1, Ahmedabad.

From the allegations made in the affidavit-in-reply, it does not appear that any disciplinary proceedings were not initiated against the petitioner nor any order for termination was passed as he was not attending his duties for the relevant period. On the other hand, the petitioner showed the aforesaid matters and orders of the department concerned that he had remained on duty and had been harassed unnecessarily by higher authority by not allowing him to join duties. As the respondents have not initiated any proceedings against the petitioner, in absence of such a long period, it appears that the department itself was under fault and that is why disciplinary proceedings could not be initiated against the petitioner. In the facts and circumstances, the petitioner is entitled for the payment of salary admissible under the rules for the aforesaid period from 21.1.80 to 22.11.1982.

8. Accordingly, the petition is allowed. The respondents are directed to calculate the exact amount of salary payable to the petitioner for the aforesaid period admissible under Rules within three months of the presentation of the certified copy of this order and further directed to make the payment thereof to the petitioner within a period of one month thereafter. Rule is made absolute accordingly with no order as to costs.

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